

REMARKS

This is in response to the Official Action currently outstanding with respect to the above-identified application, which Official Action the Examiner has designated as being a FINAL Action.

Claims 1-19 were originally presented in this application. Claims 9-12, 16 and 17 were withdrawn from further consideration earlier in the prosecution as being directed to a non-elected species. By the foregoing Amendment, Applicants respectfully seek reconsideration of the Examiner's failure to grant Applicant's request for the rejoinder of Claims 16 (as amended) and Claim 17 on the grounds that they now appropriately belong in this application by virtue of their respective dependence upon allowed claim 8. Accordingly, in the event that the Examiner grants the entry of the foregoing Amendment, Claims 1-8, and 13-19 will constitute the claims under active prosecution in this application.

A version of the claims as they will stand in the event that the Examiner grants the entry of this amendment is set forth above as required by the Rules.

More specifically, it is noted that without repeating his acknowledgement of Applicant's claim for priority and the receipt by the United States Patent and Trademark Office of the required certified copy of the priority documents, the Examiner has:

1. Again has failed to indicate whether or not the drawings attached to the present specification have been found to be acceptable. **An indication concerning the acceptability of the drawings currently on file in response to this communication is respectfully requested.**

2. Indicated that Claim 8 is allowed.
3. Failed to rejoin Claims 16 (as amended) and 17 as requested by the Applicant by indicating that Claims 9-12, 16 and 17 remain withdrawn from consideration.
4. Rejected Claims 1-7, under 35 USC 102(b) as being anticipated by the Gray reference (U.S. Patent 2,017,5345) or the Remo Aeronautical Corp. reference (French Patent 679,141), or alternatively under 35 USC 103(a) as being unpatentable over either of those references.
5. Rejected Claims 13-15, 18 and 19 under 35 USC 103(a) as being unpatentable over the Gray reference (U.S. Patent 2,017,5345) or the Remo Aeronautical Corp. reference (French Patent 679,141), further in view of the Berejik, et al reference (U.S. Patent No. 4,964,598).

Further comment in these Remarks regarding items 1-2 above is not considered to be necessary in these Remarks.

With respect to item 3, Applicant respectfully requests that the Examiner reconsider his failure to grant Applicant's request in the last Amendment in this application for the rejoinder of Claims 16 (as amended) and 17 into active prosecution in this application. In this regard, Applicant respectfully submits that since Claim 8 now stands allowed and is generic with respect to Claims 16 (as amended) and 17 that depend from Claim 8 (i.e., contain all of the limitations thereof), Claims 16 (as amended) and 17 are now allowable as well.

Indeed, this is the result proposed by the Examiner to Applicant's undersigned representative on 25 September 2003 in connection with the possible disposal of this application by Examiner's Amendment. In this regard, Applicant thanks the Examiner for the courtesy shown to its undersigned representative during that telephone conversation, as well as the subsequent telephone conversation wherein Applicant's representative informed the Examiner of its decision to await his Final Action instead of proceeding by Examiner's Amendment to partial allowance.

With respect to items 4-5 above, Applicant respectfully **traverses** the Examiner's outstanding rejections and respectfully requests reconsideration.

In support of this traversal and request for reconsideration, Applicant respectfully submits that neither the Gray reference nor the Remo Aeronautical Corp. reference in any manner indicates that either of those references teaches, discloses or suggests a device that can **hover using two wings**. More particularly, those references each teach a device having two fluttering wings wherein the torsion angle of the wings changes constantly as they are moved up and down in such a manner that the device "can fly" (i.e., move forwardly in the air). Applicant has found no teaching in either of the foregoing references to the effect that the devices therein disclosed can "hover", much less that they can do so as a result of the time average forces developed during the upward and downward strokes of the wings (i.e., wherein the resultant upward vertical force exceeds the force of gravity on the device and the horizontal forces generated cancel each other).

More specifically, the Gray reference teaches a mechanism that causes the wings to flutter vertically while at the same time twisting on their support axis and pivoting horizontally relative to the device body. The latter movement of the wings is explained at Column 3, line 64 et seq of the Gray reference as imparting forward propulsion to the device.

The requisite lift in the Gray reference, on the other hand, is generated by the wings' construction as a plurality of overlapping flaps that are closed during down strokes and open during up strokes (see Gray at Column 4, line 55 et seq). Nothing in the Gray reference, however, discloses, teaches or suggests that the Gray device can "hover" in accordance with the Examiner's definition of that term. Instead, Gray is concerned with stable lift **while at the same time imparting forward propulsion to the device.**

The Remo Aeronautical Corp. reference, on the other hand, appears to contemplate that a standard curved surfaced conventional wing be driven such that its front edge moves along a circular path as the wing is fluttered vertically. This combination apparently is deemed to create lift and to apply forward propulsive force on the device. Again, there is no teaching, disclosure or suggestion that the Remo Aeronautical device can "hover" as herein claimed.

Accordingly, in light of the foregoing, Applicant does not understand the Examiner's rejections under 35 USC 103(a). The patentability of Claims 13-15, 18 and 19 stands or falls according to the patentability of their parent independent Claim 1. Thus, since it is Applicant's position (as stated above) that contrary to the Examiner's assertion Claim 1 is in no way anticipated by either of the references cited against it because the structures disclosed in those references cannot "hover", the added limitations allegedly disclosed by the Berjick et al reference are in no way determinative of a decision concerning to the patentability of Claims 13-15, 18 and 19.

In summary, therefore, Applicant respectfully submits that (i) Claims 16 (as amended) and 17 should be rejoined into active prosecution in this application and allowed; (ii) that the Examiner has misapprehended the true teachings of the Gray and Remo Aeronautical Corp. references, and based upon that misapprehension erroneously rejected Claims 1-7; and (iii) erroneously rejected Claims 13-15, 18 and 19 in view of the allowability of Claim 1 upon which each of those claims directly or indirectly depends. Applicant further respectfully submits that neither the rejoinder of Claims 16 (as amended) and 17 nor any other issue raised by this submission will raise any new issue requiring further consideration and/or search, and further that the entry of this amendment will place this application in condition for allowance or at least in better form for Appeal as required by 37 CFR 1.116. Reconsideration of this application and the allowance of Claims 1-8, and 13-19 of this application in response to this communication, therefore, are respectfully requested.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

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By: David A. Tucker
David A. Tucker
Reg. No. 27,840
Attorney for Applicant(s)

EDWARDS & ANGELL, LLP
P.O. Box 9169
101 Federal Street
Boston, MA 02109
(617) 523-3400
355581